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Fuel Systems, Inc. and International Brotherhood of Teamsters, Local Union No. 710. Case 13–CA–44834

July 10, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks summary judgment in this case pursuant to the terms of a settlement agreement. Upon a charge and amended charge filed by International Brotherhood of Teamsters, Local Union No. 710 (the Union) on July 25 and September 19, 2008, respectively, the General Counsel issued the original complaint on November 18, 2008, against Fuel Systems, Inc. (the Respondent), alleging that it had violated Section 8(a)(5), (3), and (1) of the Act.

Subsequently, the Respondent and the Union entered into a settlement agreement, which was approved by the Acting Regional Director for Region 13 on April 6, 2009. Among other things, the settlement agreement required the Respondent to (1) post a notice to employees, comply with its provisions, and provide the Region with the names and addresses of bargaining unit employees for mailing of the notice by the Region; (2) offer Ignacio Marquez reinstatement to his former position or, if the position no longer exists because the Respondent has closed its facilities, place Marquez on a preferential rehiring list should the Respondent reopen its facility; and (3) pay Marquez backpay in the amount of \$8400 on May 6, 2009.

The settlement agreement also contained the following provision:

[I]n a case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, including but not limited to, failure to make timely installment payments of moneys, and after 15 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by Charged Party, the Regional Director shall issue complaint in the instant case, *(or, if the Regional Director has withdrawn the complaint pursuant to the terms of this Settlement Agreement, the Regional Director shall reissue the complaint previously filed in the instant case)*. Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the just issued complaint concerning the violations alleged therein. Charged Party understands and

agrees that the allegations of the aforementioned complaint may be deemed to be true by the Board, that it would not contest the validity of any such allegations, and the Board may enter findings, conclusions of law, and an order on the allegations of the aforementioned complaint. On receipt of said motion for summary judgment the Board shall issue an Order requiring the Charged Party to Show Cause why said Motion of the General Counsel should not be granted. The only issue that may be raised in response to the Board's Order to Show Cause is whether the Charged Party defaulted upon the terms of this settlement agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an Order providing full remedy for the violations found as is customary to remedy such violations, including but not limited to provisions of this Settlement Agreement. The parties further agree that the Board Order and a U.S. Court of Appeals Judgment may be entered hereon ex parte. (Emphasis in original).

By letter dated April 24, 2009, the compliance officer for Region 13 advised the Respondent that, based on its refusal to comply with the terms of the settlement agreement, the Respondent was in default. The letter stated that the Respondent had 15 days to cure its default by returning executed copies of the notice for distribution by the Region, paying Marquez backpay, expunging his records, and sending him written notification of the expungement. The Respondent failed to comply. Accordingly, pursuant to the terms of the noncompliance provisions of the settlement agreement, on May 21, 2009, the Regional Director for Region 13 reissued the complaint.

On May 26, 2009, the General Counsel filed a Motion for Summary Judgment with the Board. Thereafter, on June 4, 2009, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response, and the Charging Party filed a statement in support of the General Counsel's motion. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment¹

According to the uncontroverted allegations in the Motion for Summary Judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to remit the agreed-upon amount due employee Ignacio Marquez; failing to offer Marquez reinstatement to his job, or to inform him that his job no longer existed because the Respondent had closed its facilities and that he would be placed on a preferential rehiring list should the Respondent reopen its facility; and failing to return executed copies of the notice for distribution by the Region. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations in the reissued complaint are true.² Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation, with an office and place of business located at 5852 W. 51st Street, Chicago, Illinois, has been engaged in the business of manufacturing fuel tanks.

During the calendar year preceding issuance of the reissued complaint, a representative period, the Respondent, in conducting its business operations described above, sold and shipped goods and materials valued in excess of \$50,000 to points directly outside the State of Illinois from its Chicago facility.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union, International Brotherhood of Teamsters, Local Union No. 710, is a labor organization within the meaning of Section 2(5) of the Act.

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Snell Island SNF LLC v. NLRB*, ___ F.3d ___, 2009 WL 1676116 (2d Cir. June 17, 2009); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed ___ U.S.L.W. ___ (U.S. May 27, 2009) (No. 08-1457); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), rehearing denied No. 08-1878 (May 20, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petitions for rehearing denied Nos. 08-1162, 08-1214 (July 1, 2009).

² See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Bob Tipton	Plant Manager
Rick Playpool	Vice President
Isabel Astorga	Supply Chain Manager

The following employees of the Respondent (the unit) constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All regular full-time and regular part-time employees working at its facility currently located at 5852 W. 51st Street, Chicago, Illinois; but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the National Labor Relations Act.

On January 29, 2008, the Union was certified as the exclusive collective-bargaining representative of the unit.

At all times since January 29, 2008, based on Section 9(a) of the Act, the Union has been and continues to be the exclusive collective-bargaining representative of the unit.

About July 17, 2008, the Respondent terminated Ignacio Marquez for alleged misconduct not covered by past practice or existing work rules.

The Respondent engaged in the conduct described above because Marquez assisted the Union and engaged in protected concerted activities, and to discourage employees from engaging in these activities.

The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain over this conduct.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been discriminating in regard to the hire, or tenure, or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act; and has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by terminating Ignacio Marquez on July 17, 2008, we shall order the Respondent to make Ignacio Marquez whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful actions against him.

In this regard, the Respondent agreed in the settlement agreement to pay Marquez \$8400 in backpay, with interest, to cover the period from his termination to the effective date of the settlement agreement. As indicated above, the Respondent has not paid any backpay to Marquez, and therefore we shall order the Respondent to pay him the amount set forth in the settlement agreement.

We find, however, that the backpay due Marquez should not be limited to this amount. As set forth above, the settlement agreement provided that, in the event of noncompliance, the Board could "issue an Order providing full remedy for the violations found as is customary to remedy such violations, including but not limited to provisions of this Settlement Agreement." Thus, under this language, it is appropriate to provide the "customary" remedies of reinstatement, full backpay, expungement of the Respondent's personnel records, and notice posting.³

The additional backpay due Ignacio Marquez shall be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).⁴ However, because we shall order the Respondent to provide the customary remedy of full backpay, the applicable backpay period will commence on April 6, 2009, the day the Acting Regional Director approved the settlement agreement. We find it necessary to impose this limitation to prevent an unintended double recovery for the period running from the date that Marquez was terminated to the effective date of the settlement agreement.

We shall also order the Respondent to offer Marquez full reinstatement to his former job, or, if that job no

longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. In addition, in the event that the job no longer exists because the Respondent has closed its facility, we shall order the Respondent to place Marquez on a preferential hiring list should the Respondent reopen its facility.

Further, the Respondent shall be required to remove from its files any reference to the unlawful termination of Marquez, and to notify him in writing that this has been done and that the unlawful termination will not be used against him in any way.

Finally, having found that the Respondent terminated Marquez for alleged misconduct not covered by past practice or existing work rules without notifying the Union or affording it an opportunity to bargain, we shall order the Respondent, on request, to bargain with the Union concerning this decision and its effects.

ORDER

The National Labor Relations Board orders that the Respondent, Fuel Systems, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with International Brotherhood of Teamsters, Local Union No. 710, as the exclusive collective-bargaining representative of the employees in the unit below, by terminating employee Ignacio Marquez for alleged misconduct not covered by past practice or existing work rules without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this decision and its effects. The unit is:

All regular full-time and regular part-time employees working at its facility currently located at 5852 W. 51st Street, Chicago, Illinois; but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the National Labor Relations Act.

(b) Terminating or otherwise discriminating against any employee for engaging in protected concerted activities or assisting International Brotherhood of Teamsters, Local Union No. 710, or any other labor organization, or to discourage employees from engaging in these activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

³ See *L.J. Logistics, Inc.*, 339 NLRB 729, 730 (2003).

⁴ In the complaint, the General Counsel seeks compound interest computed on a quarterly basis for any backpay or other monetary awards. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Glen Rock Ham*, 352 NLRB 516, 516 fn. 1 (2008), citing *Rogers Corp.*, 344 NLRB 504 (2005).

(a) On request, bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit employees concerning the decision to terminate Ignacio Marquez for alleged misconduct not covered by past practice or existing work rules, and the effects of this decision.

(b) Make Ignacio Marquez whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, offer Ignacio Marquez full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. Further, if that job no longer exists because the Respondent has closed its facility, place Ignacio Marquez upon a preferential hiring list should the Respondent reopen its facility.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful termination of Ignacio Marquez, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful termination will not be used against him in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition, pursuant to the terms of the settlement agreement, the notice shall be posted in English and Spanish, and the Respondent shall provide signed copies of the notice in

English and Spanish for mailing by the National Labor Relations Board and a list of names and last known addresses for all current and former employees employed by the Respondent in the bargaining unit represented by the Union at the Respondent's facility located in Chicago, Illinois, at any time from July 17, 2008, to April 6, 2009.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 10, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with International Brotherhood of Teamsters, Local Union No. 710, as the exclusive collective-bargaining representative of the employees in the unit below, by terminating employees for alleged misconduct not covered by past practice or existing work rules without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this decision and its effects. The unit is:

⁵If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

All regular full-time and regular part-time employees working at our facility currently located at 5852 W. 51st Street, Chicago, Illinois; but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the National Labor Relations Act.

WE WILL NOT terminate or otherwise discriminate against you for engaging in protected concerted activities or assisting International Brotherhood of Teamsters, Local Union No. 710, or any other labor organization, or to discourage you from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit employees concerning the decision to terminate Ignacio Marquez for alleged misconduct not covered by past practice or existing work rules, and the effects of this decision.

WE WILL make Ignacio Marquez whole for any loss of earnings and other benefits resulting from his termination, plus interest.

WE WILL, within 14 days from the date of the Board's Order, offer Ignacio Marquez full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. Further, if that job no longer exists because we have closed our facility, WE WILL place Ignacio Marquez on a preferential hiring list should we reopen our facility.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful termination of Ignacio Marquez, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful termination will not be used against him in any way.

FUEL SYSTEMS, INC.